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October 8, 2004

EX PARTE OR LATE FILED

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Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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OCT - 8 2004

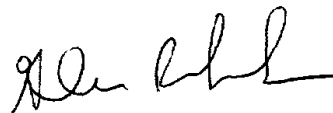
Federal Communications Commission
Office of Secretary

**Re: Ex Parte Meetings in WC Docket No. 03-211 (Vonage)
WC Docket No. 03-266 (Level 3)
WC Docket No. 04-36 (IP-Enabled Services NPRM)**

Dear Ms. Dortch:

On October 7, 2004, the Voice on the Net Coalition, represented by Jim Kohlenberger, VON Coalition Executive Director; Glenn Richards, Shaw Pittman; Jonathan Askin, Pulver.com; Kate Cronin, AT&T; Praveen Goyal, Covad; Margie Dickman, Intel; Brita Strandberg, Skype; Cindy Schonhaut and John Nakahata, Level 3; and Todd Daubert, USA Datanet, met with FCC staff including Michael Goldstein, Julie Veach, Terri Natoli, Tom Navin and John Stanley. At the meetings, the VON Coalition members expressed their support for the Vonage Petition and a finding that VoIP services are subject only to interstate jurisdiction. Certain of the VON Coalition members discussed the architecture of their VoIP networks and how services were provided. Handouts were provided by AT&T, Level 3, and Skype, copies of which are attached. Please direct any questions regarding this matter to the undersigned.

Very truly yours,



Glenn S. Richards

cc: Michael Goldstein
Julie Veach
Terri Natoli
Tom Navin
John Stanley

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VoIP over Broadband

VantageSM Service

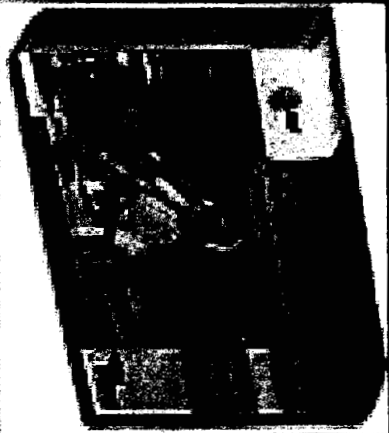
October 7, 2004

AT&T CallVantageSM Service Market Reach

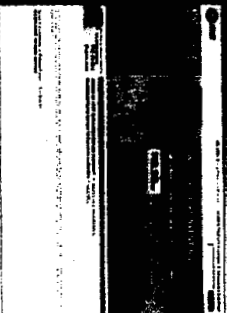


- Available nationwide
- Purchase online, call a sales agent or purchase adapter at a retail store

How to Order AT&T CallVantageSM



CallVantage
Starter Kit

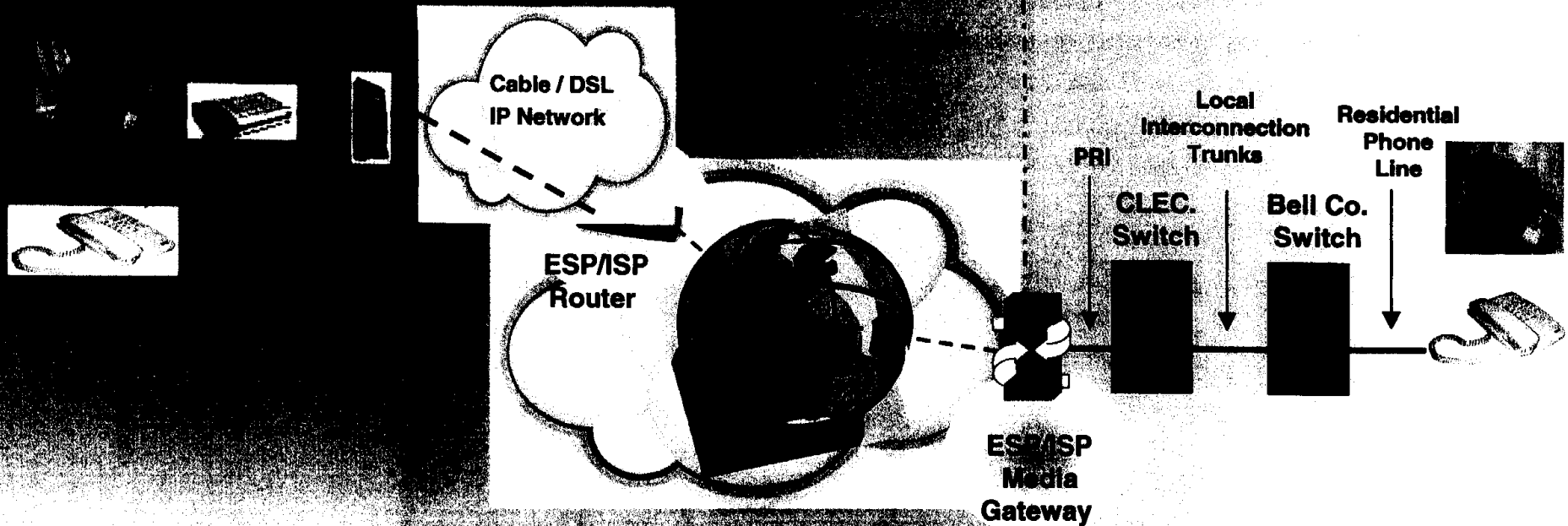


amazon.com



VoIP Originating over Broadband

Using a GATEWAY to Terminate to the Phone Network (PSTN)

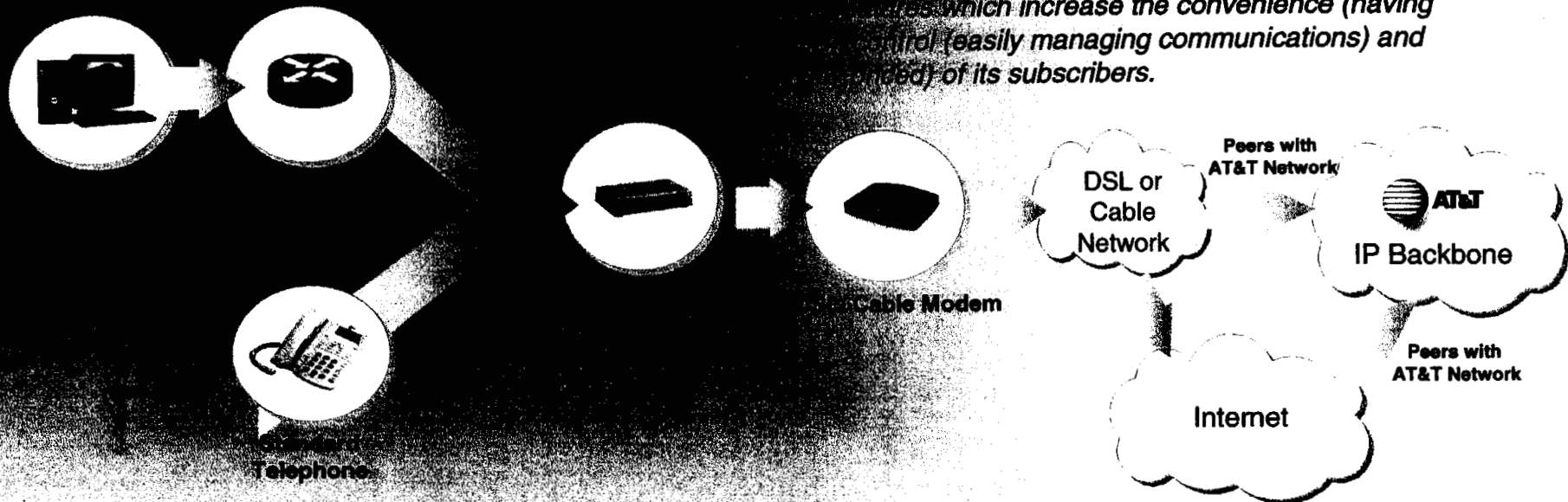


**Public Internet or Private IP
Network (178,000+ networks)
(packet switched)**

**Public Switched Telephone Network
(circuit switched)**

The AT&T CallVantageSM Service

CallVantage is a revolutionary new broadband phone service that combines local and long distance plus the industry's most advanced features which increase the convenience (having control (easily managing communications) and (being able to control) of its subscribers.



Current Feature Set

Basic Voice Capabilities

- Unlimited Local (US offer)
- Unlimited LD Calling (US offer)
- International
- Caller ID (Without Name)
- Call Waiting / Forwarding
- Three Way Calling
- Personal Address Book



Customer Premise Equipment

- Telephone Adaptor (TA) device
- Connects home phone and PC to broadband connection

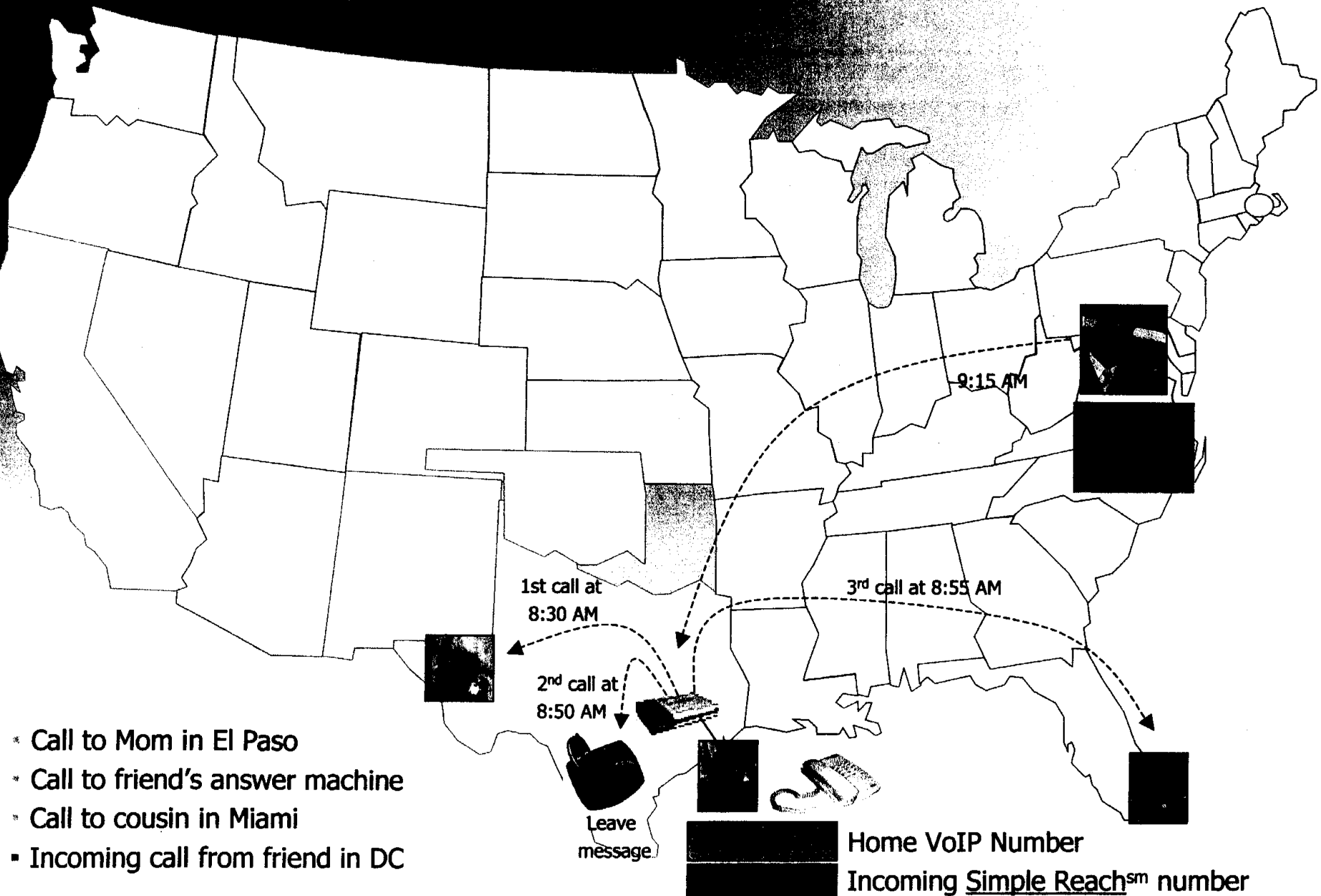


Call Applications on Web

- Call Logs
- Click-to-Dial
- Do Not Disturb
- Speed Dialing
- Telephone Portal (Feature Manager)
- Voicemail with eFeatures
- Locate Me
- Personal Conferencing (Pay per Use)



Morning Calls to and from Home in Houston



- * Call to Mom in El Paso
- * Call to friend's answer machine
- * Call to cousin in Miami
- Incoming call from friend in DC

9:30 AM Set up "Locate Me" through Web Portal

YOUR ACCOUNT | INTERNATIONAL RATES | FEEDBACK | HELP | LOGOUT

PHONE BOOK	SPEED DIAL	CALL LOGS	DO NOT DISTURB	SHORTCUT PHONE NUMBERS
PHONE FEATURE NUMBER	VOICE MAIL + ATTACHMENTS	PERSONAL CONTACTS	BASIC PHONE FEATURES	

Locate Me

Turn Locate Me on when you are away from your phone but still need to be reached. Choose several phone numbers where you can be reached and have your service ring them one after another in sequence, or all at once.

Ring in sequence: When activated, incoming calls are redirected to the phone numbers you specify below. Callers will hear a special greeting asking them to hold while the service finds you. Callers can press "1" at any time to leave you a voice mail. Use a system-provided greeting or record your own (be sure to let users know the system is attempting to locate you and to press "1" to go straight to voicemail.)

Ring all at once: When activated, incoming calls are simultaneously sent to each of the phone numbers you specify below. When you answer a Locate Me call, you'll be picked up by an answering machine. If no answer, the service will try to reach you only at the numbers checked below.

To turn Locate Me on or off, select your settings below. Be sure to click "Save settings" when you are done.

Learn more about Locate Me

At what phones and numbers will the service try to reach you?

Use? Location Name Phone Number

Ring type: ☐ Ring all phones at once ☐ Ring in the order listed

Greeting type: For the ring in order option, callers will hear a greeting. Use a system-provided greeting or record your own. Click record and AT&T CallVantage Service will call you with a message asking you to record your greeting. The system greeting says "Hello. We are trying to reach your party".

USE RECORDED GREETING | RECORD YOUR GREETING | SAVE SETTINGS



YOUR FEATURES:



Your Phone Feature Manager lets you access this feature remotely by phone.

On your service phone: On another phone: (281) 282-8030

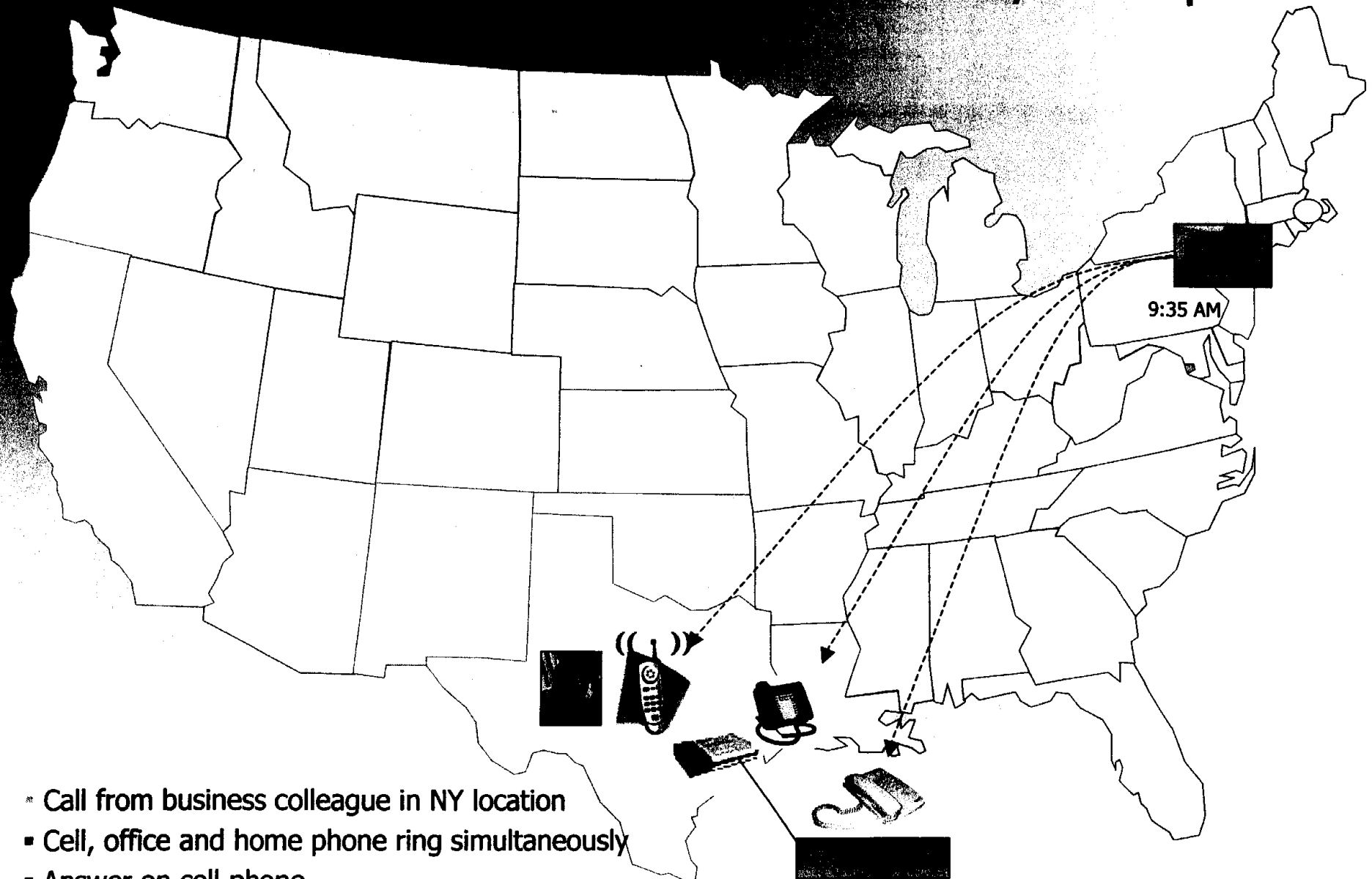
PHONE FEATURE MGR | HELP | FEEDBACK



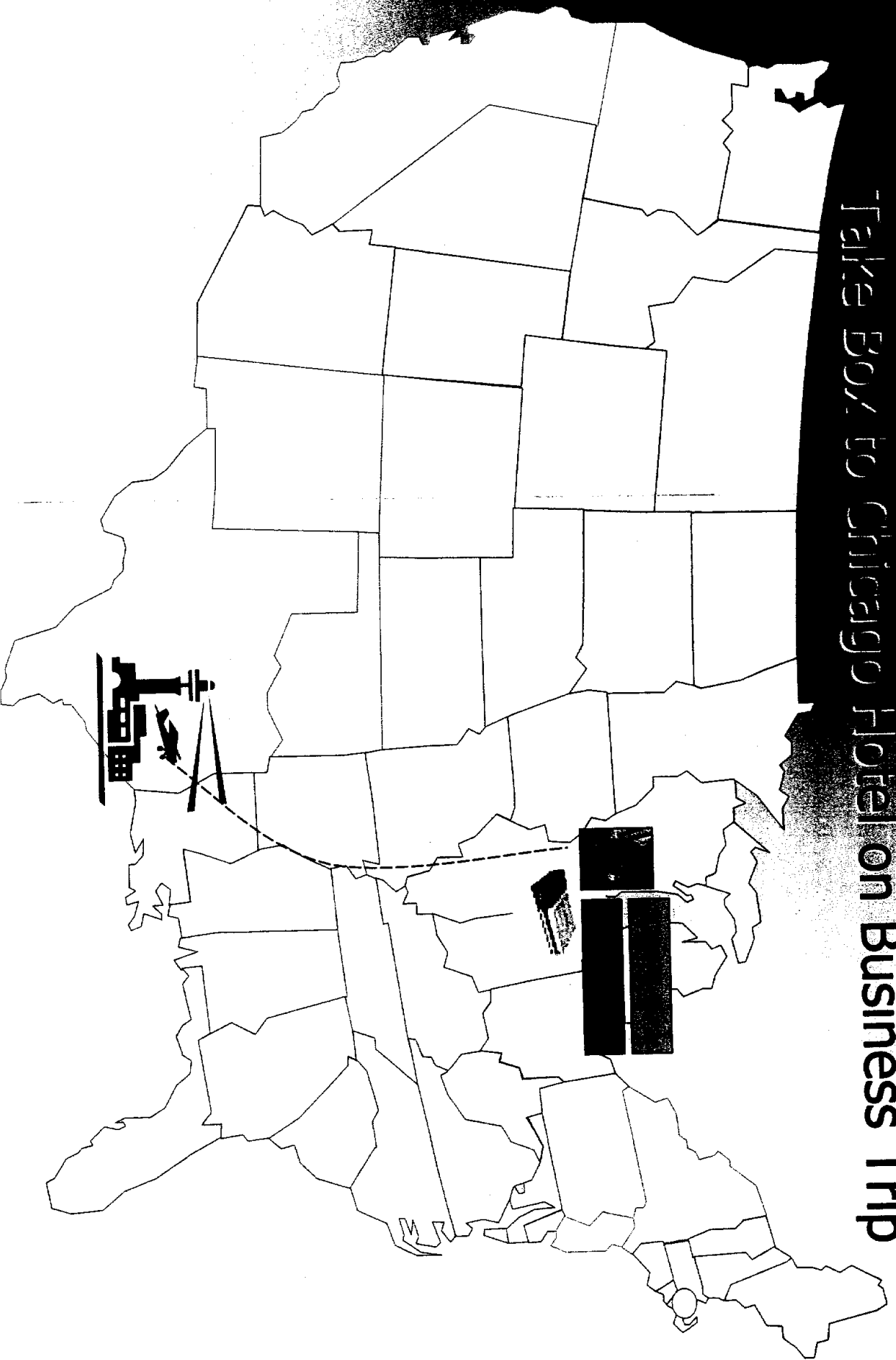
access your features even when you're not on the web

LEARN MORE ABOUT PHONE FEATURES

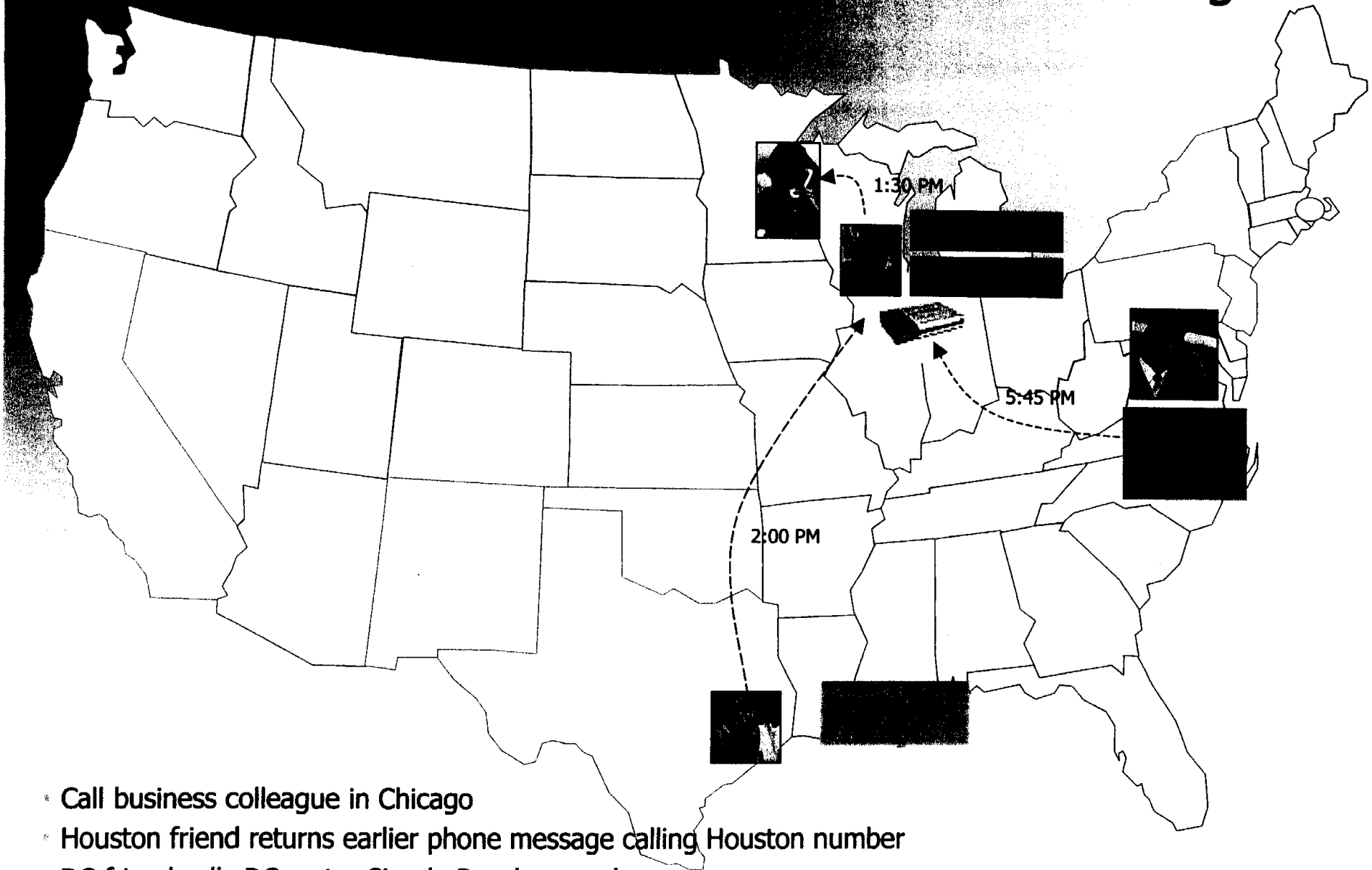
Get "Located" on Cell Phone on way to Airport



1:00 PM
Take Box to Chicago Hotel on Business Trip

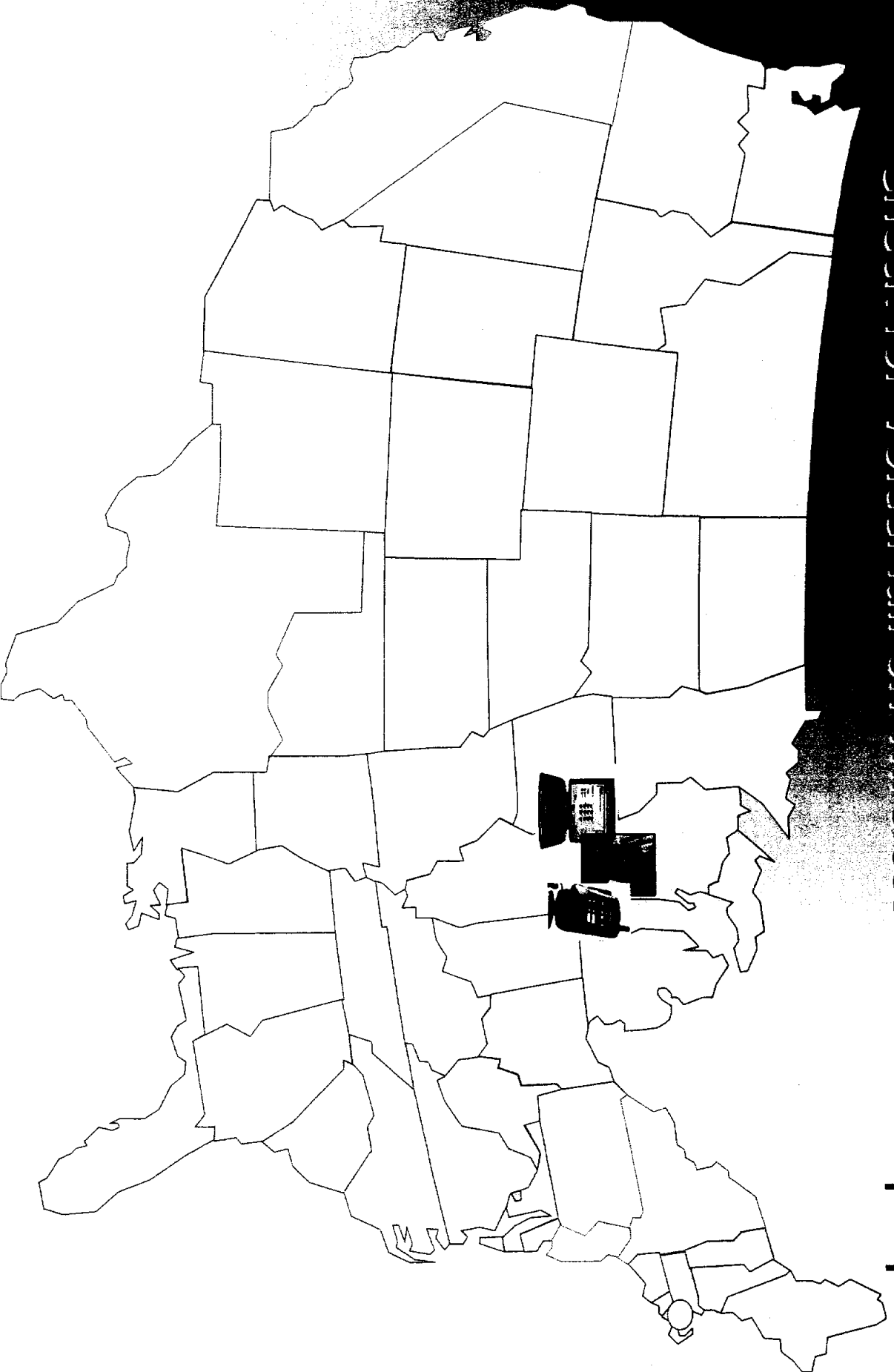


Afternoon Calls to and from Hotel in Chicago

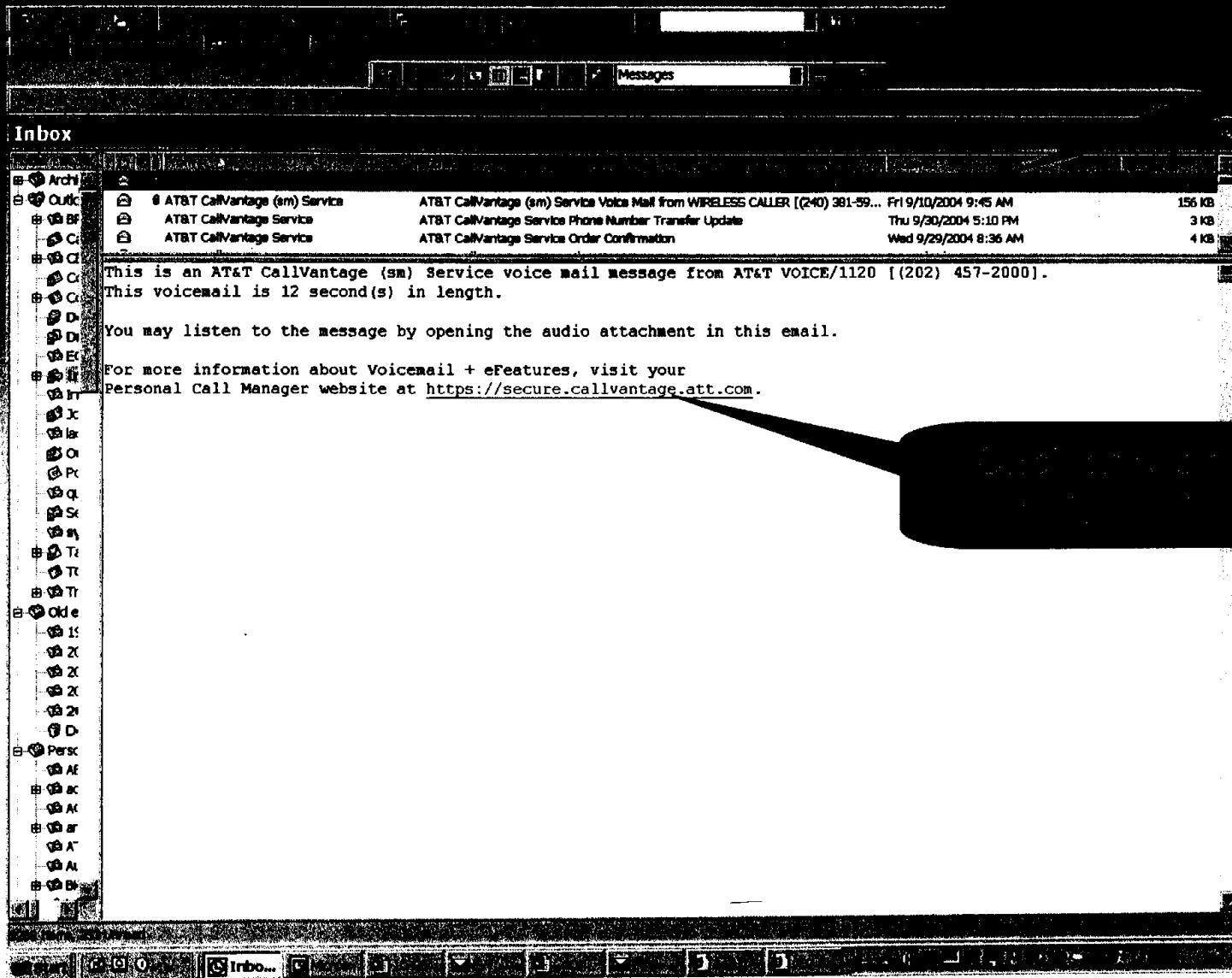


- * Call business colleague in Chicago
- * Houston friend returns earlier phone message calling Houston number
- DC friend calls DC metro Simple Reachsm number

Check for Voicemail on Wireless PDA or Laptop



Voicemail and E-mail are Integrated



Set up "Do Not Disturb"



YOUR FEATURES:

Telephone Enabled

Your Phone Feature Manager: In to you access this feature remotely by phone.
On your service phone: **ATTN#**
On another phone: **(512) 691-4643**

→ **PHONE FEATURE MGR**
→ **HELP**
→ **FEEDBACK**

DID YOU KNOW...

...you can
ring other phones
to find you
when you're not
at home

→ **LEARN MORE ABOUT**
LOCATE ME

PHONE FEATURE MANAGER VOICE MAIL
LOCATE ME SPEED DIAL BASIC PHONE

Do Not Disturb

Tell your Do Not Disturb feature to stop ringing your phone, while leaving your messages or record one of your own.

→ Need extra help? Do Not Disturb

DO NOT DISTURB STATUS

Scheduled Do Not Disturb is not active.
Do Not Disturb Now is not active.

SET DO NOT DISTURB RIGHT NOW

Start Do Not Disturb Now for:

START

SCHEDULE DO NOT DISTURB FOR LATER

☐ Enable Scheduled Do Not Disturb
☐ no schedule at this time
☒ weekdays (Mon-Fri)
☐ weekends (Sat-Sun)
☐ every day

From **12:00 PM**

SAVE SCHEDULE

SET A DO NOT DISTURB GREETING

The automated greeting for Do Not Disturb says "Hello. We are not taking calls right now. To leave us a voice message, press 1 or stay on the line. If this is truly an urgent matter press 2." If you record your own greeting, please be sure to tell your callers to press 2 if the call is urgent.

Your caller will hear a greeting: **use recorded greeting**

SAVE SETTINGS

DO NOT DISTURB STATUS

Scheduled Do Not Disturb is not active.
Do Not Disturb Now is not active.

SET DO NOT DISTURB RIGHT NOW

Start Do Not Disturb Now for: **30 minutes**

START

SCHEDULE DO NOT DISTURB FOR LATER

☒ Enable Scheduled Do Not Disturb
☐ no schedule at this time
☒ weekdays (Mon-Fri)
☐ weekends (Sat-Sun)
☐ every day

From

9:00 PM

to **7:00 AM** US Central Daylight

SAVE SCHEDULE

SET A DO NOT DISTURB GREETING

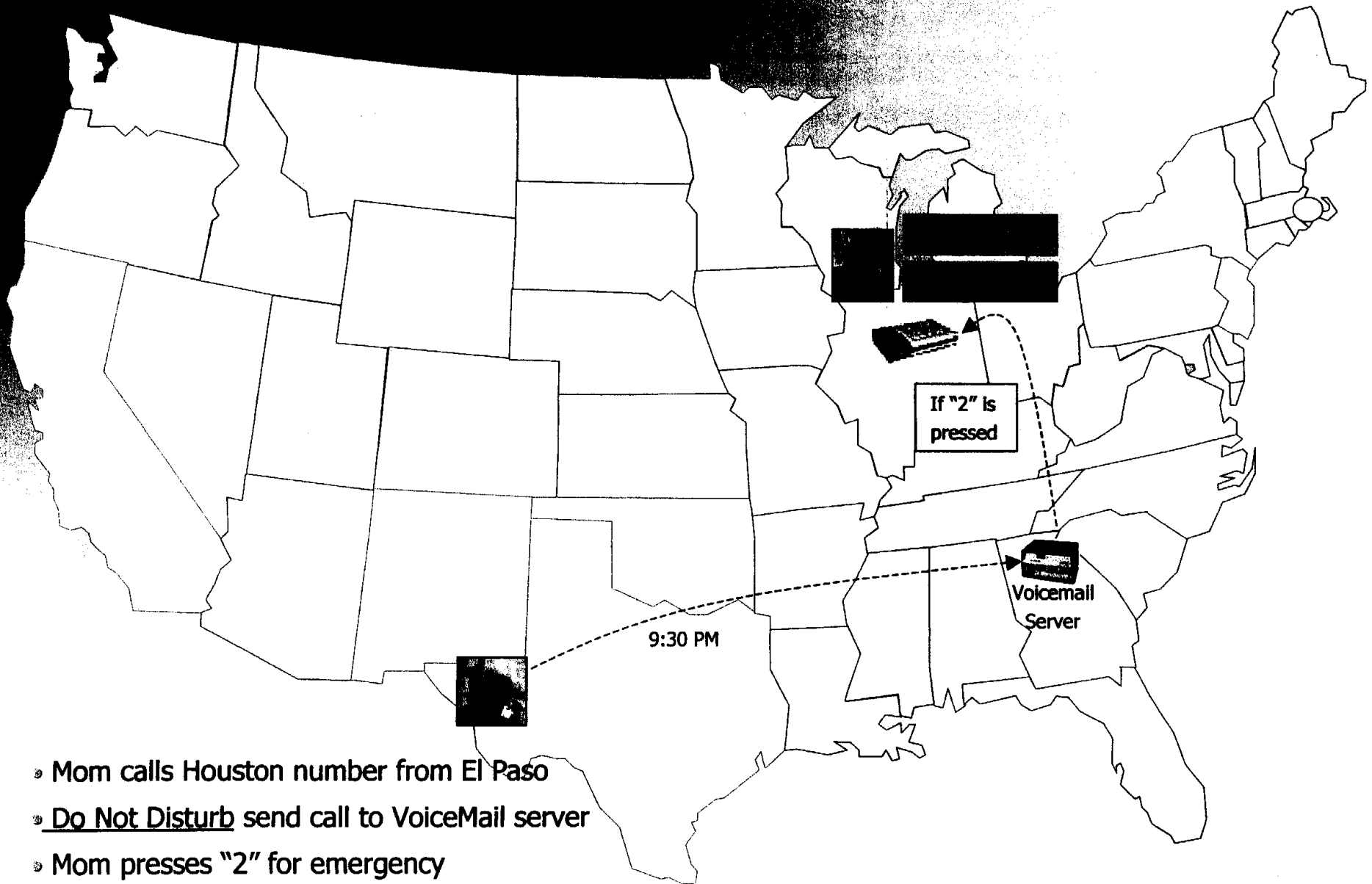
The automated greeting for Do Not Disturb says "Hello. We are not taking calls right now. To leave us a voice message, press 1 or stay on the line. If this is truly an urgent matter press 2." If you record your own greeting, please be sure to tell your callers to press 2 if the call is urgent.

Your caller will hear a greeting: **use recorded greeting**

RECORD YOUR GREETING

SAVE SETTINGS

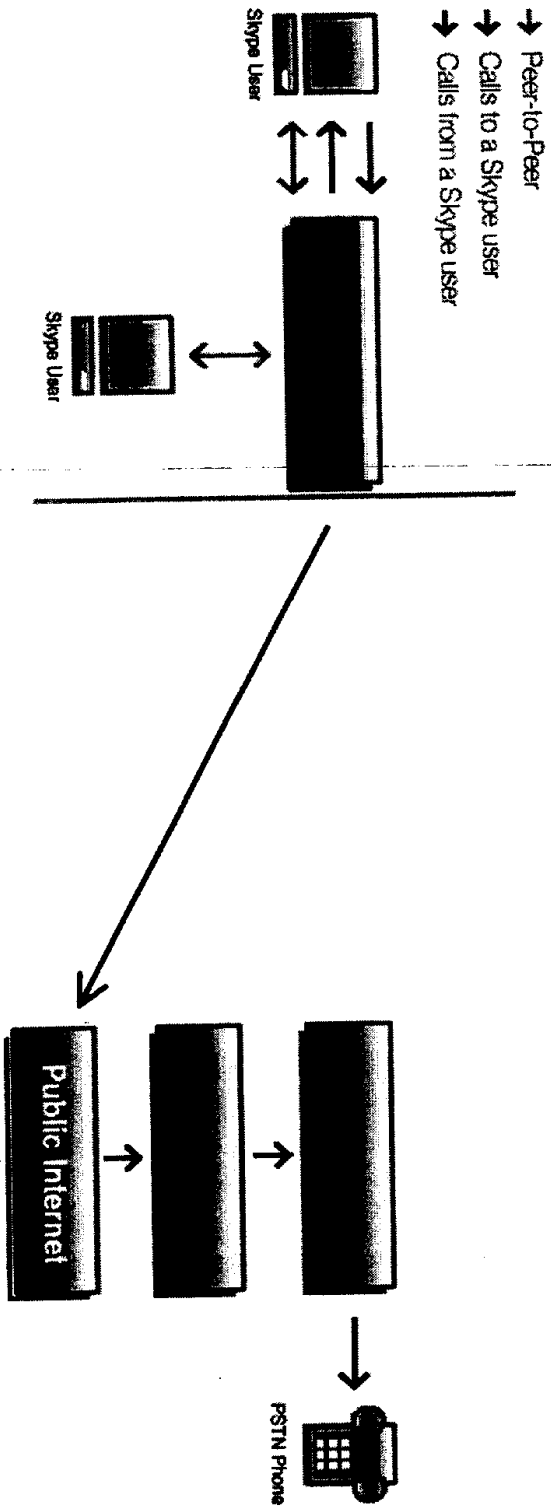
Mom Calls Houston Number



- Mom calls Houston number from El Paso
- Do Not Disturb send call to VoiceMail server
- Mom presses "2" for emergency

ORIGINAL

Call Network



skype



Skype screenshots for

[Windows](#) | [Mac OS X](#) | [Linux](#) |
[Pocket PC](#)



You Have



4 Contacts Online

Your Account



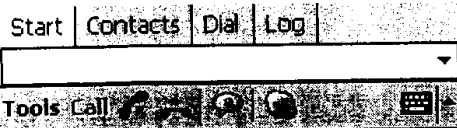
SkypeOut balance: 59.05 EUR

[Click here to go to your account page](#)

Start tab

This is your home base; see any missed calls, missed instant messages etc. You'll get a quick overview of how many friends you have online and you can instantly see the status of services your subscribe to.

[Next screenshot »](#)

544075 Users Online [Find a Contact](#)

2 Making a call

3 Talking

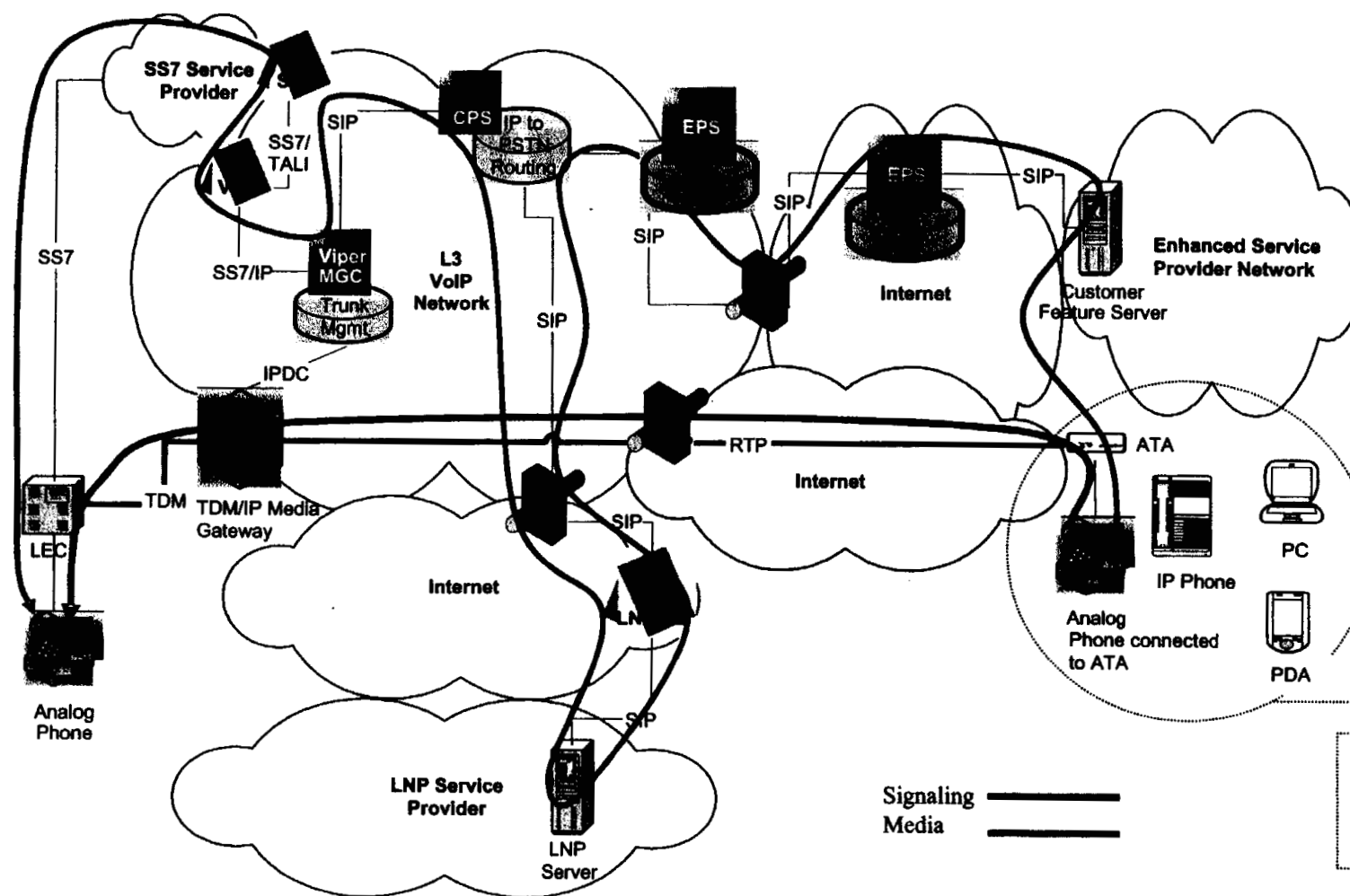
4 Call-time functions

5 Call regular phones

6 Dialpad

7 Call list

IP Enabled Services Call Flow IP-PSTN



Call Flow Narrative

- Call originates from a phone connected to an Analog Terminal Adapter (ATA), from a PC with a SIP Soft Client, or from an IP Phone
- Call is sent through a broadband connection to a service providers Feature Server (FS)
- The FS hands the call to the Level 3 Network at a Level 3 Edge Proxy Server (EPS)
 - The EPS is provisioned specific to a customer, so it authenticates the calls came from a specific customer
 - EPS is configured that all calls coming from that customer's FS will be classified as Enhanced Service in the SIP Invite with a Level 3 proprietary header
- EPS sends call to Core Proxy Server (CPS)
 - CPS is the network routing engine that determines how to terminate the call
 - For this case, CPS sees the Enhanced Service classification, so it will try to find a DEOT to which it can terminate the Dialed Number.
 - CPS will trigger out to do an LNP dip on any call that could terminate over DEOT
 - CPS will use either the LRN or the terminating NPA-NXX to find the correct DEOT
- CPS sends call to Media Gateway Controller (MGC)
 - MGC converts SIP to ISUP
 - MGC sees Enhanced Services classification and sets OLI to a configurable value (64 or 65 are the values being proposed)
- MGC sends call to LEC

EX PARTE OF LEVEL 3 COMMUNICATIONS, LLC
(WCB Docket No. 03-211; 04-36)

IP-PSTN COMMUNICATIONS ARE JURISDICTIONALLY INTERSTATE

The Commission should declare that all IP-PSTN communications are interstate – and subject to the FCC’s exclusive jurisdiction – for the simple and uncontroversial reason that it is impossible to determine the physical location of the IP endpoint. Classifying IP-PSTN and incidental PSTN-PSTN IP-enabled communications as interstate would prevent state commissions from asserting jurisdiction over such service, and thereby eliminate the burdensome patchwork of regulation across 51 jurisdictions that, as the Commission has recognized, has started to emerge “[e]ven at this early stage.”¹

A. IP-PSTN Communications Are Interstate For The Same Reasons That pulver.com’s Free-World Dialup Service Is Interstate.

In its order granting pulver.com’s petition for declaratory ruling, the FCC determines that Pulver’s Free World Dialup (“FWD”) service is an interstate service subject to the Commission’s exclusive jurisdiction. Because IP-PSTN communications share the geographic characteristics that prompted the Commission’s determination, IP-PSTN communications are jurisdictionally interstate as well.

The Commission commences its jurisdictional analysis in the *Pulver Order* by observing that a state regulator may exercise jurisdiction over communications services in only two situations: *First*, when communications “can be characterized as ‘purely intrastate,’” or, *second*, when “it is practically and economically possible to separate

¹ *IP-Enabled Services NPRM* at ¶ 34 (“Even at this early stage, states have begun to diverge in their approaches to the regulation of VoIP services.”).

interstate and intrastate components of a jurisdictionally mixed . . . service without negating federal objectives for the interstate component.”²

The Commission then explains that it exercises exclusive jurisdiction over FWD because neither of the two state-jurisdiction situations applies. First, because the location of FWD “members’ physical locations can continually change,” the FCC explains, “it is evident that the capabilities FWD provides its members are not purely intrastate capabilities.”³ The same “evident” reasoning applies to IP-PSTN communications like Level 3’s.⁴ Because the IP end users in IP-PSTN communications can change their locations continually and cross from one jurisdiction to another, IP-enabled communications services are not purely intrastate.

Second, the FCC concludes that it is not practically and economically possible to separate the interstate and intrastate components of a FWD communication because only the users themselves “know where the endpoints are.”⁵ The Commission explains that any effort to track the location of data packets and end users for jurisdictional purposes would be impractical at best, and would “forc[e] changes on this service for the sake of regulation itself, rather than for any particular policy purpose.”⁶ Requiring Pulver to “comply with legacy distinctions between federal and state jurisdictions” would be

² *Pulver Order* at ¶ 20.

³ *Id.*

⁴ See Declaration of Jeffrey Pelletier at ¶ 13 (“Pelletier Declaration”), attached hereto. See also Level 3 product brochures entitled “HomeTone” and “(3) Tone Business – Hosted IP Voice Service for Business,” attached hereto.

⁵ *Pulver Order* at ¶ 21.

⁶ *Id.* at ¶¶ 21, 24.

impractical and uneconomic, according to the Commission, because “such distinctions do not appear to serve any legitimate public policy purpose” in this context.⁷

The same logic applies to IP-PSTN communications, because the locations of IP endpoints are known only to the IP end users themselves.⁸ As a result, any effort to separate interstate and intrastate components of an IP-PSTN communication “would involve the installation of systems that are unrelated to providing [the] service to end users.”⁹ As the Commission observes with respect to FWD, “[i]nvestment in such systems would improve neither service nor efficiency” in IP-PSTN communications.¹⁰ Indeed, “imposing this substantial burden [on IP-PSTN communications] would make little sense and would almost certainly be significant and negative for the development of new and innovative IP services and applications.”¹¹

In addition, the *Pulver Order* establishes that IP-PSTN communications would be jurisdictionally interstate under the Commission’s “mixed-use” doctrine.¹² Like FWD users, the IP end users in IP-PSTN communications have “global portability,” which enables them “to initiate and receive on-line communications from anywhere in the world where [they] can access the Internet via a broadband connection.”¹³ Because more than a *de minimis* amount of the communication is interstate, the Commission explains, the

⁷ *Id.* at ¶ 24.

⁸ Pelletier Declaration at ¶¶ 8-17.

⁹ *Pulver Order* at ¶ 24.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.* at ¶ 22 (“Where separating interstate traffic from intrastate traffic is impossible or impractical, the Commission has declared such traffic to be interstate in nature.”).

¹³ *Id.*; Pelletier Declaration at ¶¶ 15-16.

communications are deemed interstate under the mixed-use rule. The Commission's treatment of FWD also demonstrates that any effort by a state PUC to regulate IP-PSTN communications would likely run afoul of the Commerce Clause of the Constitution. Internet applications like FWD and IP-PSTN communications are not bound by geography, which would "render an attempt by a state to regulate any theoretical intrastate . . . component [of such services] an impermissible extraterritorial reach."¹⁴ In this vein, the FCC rejects the counter-argument that state economic regulation would benefit the public, concluding instead that "the burdens upon interstate commerce would be significant."¹⁵

The key fact underlying the FCC's jurisdictional analysis – that "Internet applications like FWD . . . separate the user from geography"¹⁶ – applies with equal strength to IP-PSTN and incidental PSTN-PSTN services.¹⁷ Regardless of whether the locations of both endpoints are unknown (as in an FWD communication) or only one endpoint is unknown (as in an IP-PSTN communication), it is impossible track the route from one endpoint to the other. As a result, it is also impossible to ascertain whether and which jurisdictional boundaries a particular communication crosses. Without any information about the jurisdictional course, it is similarly impossible to separate an IP-PSTN communication into intrastate and interstate components. And, even if it were technically possible to track bit streams for jurisdictional purposes, it would be

¹⁴ *Pulver Order* at ¶ 23.

¹⁵ *Id.* at ¶ 24.

¹⁶ *Id.* at ¶ 4.

¹⁷ Pelletier Declaration at ¶¶ 15-16.

impractical and uneconomic to do so because tracking the packets of an IP-PSTN communication “would improve neither service nor efficiency.”¹⁸

B. The Commission’s *IP-Enabled Services NPRM* Supports The Conclusion That IP-PSTN Communications Are Jurisdictionally Interstate.

In the *IP-Enabled Services NPRM*, the Commission seeks comment on the proper jurisdictional category for IP-enabled communications services. At the same time, however, it suggests that IP-PSTN communications services like Level 3’s are jurisdictionally interstate because, according the FCC, “[p]ackets routed across a global network with multiple access points defy jurisdictional boundaries.”¹⁹

The Commission begins its jurisdictional inquiry in the *NPRM* with a recap of its *Pulver Order*, reaffirming that state regulation of Internet applications like FWD “is inconsistent with the controlling federal role over interstate commerce required by the Constitution.”²⁰ The Commission then observes that, “with Internet communications, the points of origination and termination are not always known.”²¹ In light of the absence of a nexus between geography and service, the Commission requests comment on the appropriate approach to jurisdiction, questioning in particular whether “the end-to-end analysis, designed to assess point-to-point communications, ha[s] any relevance in this new IP environment.”²²

¹⁸ *Pulver Order* at ¶ 24; see also Pelletier Declaration at ¶15.

¹⁹ *IP-Enabled Services NPRM* at ¶ 4.

²⁰ *Id.* at ¶ 39.

²¹ *Id.* at ¶ 40.

²² *Id.*